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Letter dated 19 July 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from France submitted pursuant to resolution 1624 (2005) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Loj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 14 July 2006 from the Permanent Representative of France to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: French]

In reply to your letter of 17 May 2006, I have the honour to transmit herewith France's report on the implementation of Security Council resolution 1624 (2005) (see enclosure).

(*Signed*) Jean-Marc **de La Sablière**

Enclosure

Implementation of United Nations Security Council resolution 1624: report of France in response to the questions of the Counter-Terrorism Committee

1 (a) What measures does France have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

Our legal system contains provisions for combating the spreading of extremist ideas.

The Act of 10 January 1936 allows the President of the Republic to dissolve, through a cabinet decree, associations or "de facto groups" inciting to discrimination, hatred or violence towards a person or group of persons owing to their origin or membership (or non-membership) of a particular ethnic group, nation, race or religion. Groups which, "in French territory or originating from that territory, pursue activities intended to promote acts of terrorism in France or abroad" are included in this legislation.

French legislation concerning incitement to terrorism is covered in the Penal Code and the Act of 29 July 1881 on the press and media. Article 322-6-1 of the Penal Code criminalizes the dissemination to non-professionals, by any means, of processes for manufacturing weapons of destruction, using explosive, nuclear, biological or chemical materials.

Article 24 of the Act of 1881 criminalizes incitement to and advocacy of terrorism. The penalty for this offence is five years' imprisonment and a fine of 45,000 euros. Article 23 defines the range of means used for such incitement, which can occur orally in a public place, or on any written material accessible to the public.

Article 24, paragraph 6, provides that, "anyone who, using one of the means set forth in the preceding article, has directly caused any of the terrorist acts set forth in Book IV, Title II of the Penal Code or has advocated such acts, shall be subject to five years' imprisonment and a fine of 45,000 euros".

To be punishable, such incitement must have been committed using "speeches, shouts or threats proferred in public places or meetings, or by written words, printed matter, drawings, engravings, paintings, emblems, pictures or any other written, spoken or pictorial aid, sold or distributed, offered for sale or displayed in public places or meetings, either by posters or notices displayed for public view, or by any means of electronic communication" (Act of 29 July 1881, art. 23).

Incitement is punishable even if it has not resulted in an offence.

This legislation defines terrorism as an individual or collective undertaking, the aim of which is to cause serious damage to public order by means of intimidation or terror, which include the following:

- deliberate attacks upon the life or physical integrity of the person, abductions and sequestration; hijacking of aircraft, ships or any other means of transport;

- theft, extortion, destruction, damage or deterioration, as well as computer-related crimes;
- offences in relation to combat groups and disbanded movements;
- manufacture or possession of deadly or explosive devices or machines;
- production, sale, importation or exportation of explosives;
- acquisition, possession, transport or illicit carriage of explosives or explosive devices;
- possession, carriage or transport of weapons of war and munitions in categories 1 and 4;

– the offences laid down in articles L.2341-1 and L.2341-4 of the Defence Code;

– individual or collective undertakings the aim of which is to cause serious damage to public order by means of intimidation or terror;

– introduction into the atmosphere, upon or under the ground, into food or food components, or into any waters, including those of the territorial sea, of a substance that is likely to endanger the health of persons or animals or the natural environment;

– participation in a group or an understanding established for the purpose of preparing, by means of one or more material actions, one of the aforementioned acts of terrorism;

– financing a terrorist undertaking by supplying, bringing together or managing funds, securities or assets or providing guidance for this purpose, with the intention or in the knowledge that they will be used, wholly or in part, to perpetrate a terrorist act, whether or not such an act occurs;

– inability to substantiate an income commensurate with one's lifestyle, while being closely associated with one or more persons who engage in terrorist acts.

The Government is considering the possibility of extending the procedural regime for terrorist offences to include the offence of incitement to commit terrorist acts.

The Act of 9 March 2004, "adapting judicial methods to the evolution in crime", concerning action to combat terrorism, strengthened the special procedural regime by inserting "terrorist offences" into the category of organized crime (Code of Criminal Procedure, arts. 706-73 and 706-74) and by developing new investigation techniques.

These legislative adjustments also increased criminal penalties:

A specific offence was established for directing and organizing a conspiracy designed to prepare terrorist acts (Penal Code, art. 421-5, para. 2), which carries a penalty of 20 years' imprisonment and a fine of 500,000 euros;

The penalties for trafficking and manufacturing weapons, including biological weapons, and explosives, when committed by an organized gang, were increased to 10 years' imprisonment;

A new offence was established setting forth the penalty of one year's imprisonment for disseminating, except for professional use, processes for the

manufacture of destructive devices from powders or explosives, nuclear, biological or chemical materials or any other materials intended for domestic, industrial or agricultural use. Penalties are increased to three years when such dissemination takes place through a telecommunications network (Penal Code, art. 322-6-1);

A new offence of ecological terrorism was established, referring to the introduction of a substance that is likely to endanger the health of persons or animals or the natural environment "into food or food components" (Penal Code, art. 421-2).

The Act of 23 January 2006, combining prevention and punishment, completes these arrangements. The Act:

develops the use of video surveillance and strengthens the automatic vehicle surveillance system;

facilitates identity checks in cross-border trains;

requires electronic communication operators to keep data on telephone and Internet connections for one year;

creates a new cross-border control database;

allows the authorized services access, in an administrative framework, to certain files of the Ministry of the Interior;

increases the penalty for "formation of a terrorist organization" (from 20 years' imprisonment to 30 for leaders and organizers and from 10 years to 20 for participants);

authorizes the committing magistrate to extend the maximum length of custody from four to six days in cases of "imminent terrorist action" or if "urgently required by the needs of international cooperation";

centralizes, under the Paris courts for the execution of sentences, the monitoring of persons convicted of terrorist acts;

and extends the time limit within which the minister responsible for naturalization must begin proceedings for deprivation of French nationality.

1.2 What measures does France take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

The Code on the Entry and Residence of Foreigners and the Right of Asylum (CESEDA) states that the French Office for the Protection of Refugees and Stateless Persons (OFPRA) is not competent to receive applications from persons who have been refused residency on the ground that their presence in the territory could pose a serious threat to public order, public safety or State security (art. L 741-4), which is the case of a person who incites others to commit terrorist acts.

Foreigners without residence permits who request admission to France as asylum-seekers are therefore denied admission if they are suspected of being involved in a terrorist activity. If they have been granted a temporary residence permit, the permit may be withdrawn for the same reasons.

Subsidiary protection, which is granted for one year by OFPRA to foreigners under serious threat in their countries of origin, shall also be refused.

In addition, article L. 213-1 of the Code provides for denial of access to the territory by any foreigner who represents a threat to public order.

European nationals are subject to special treatment pursuant to the Decree of 11 March 1994, amended on 29 October 2005 in order to incorporate European Directive 2004/38/CE of 29 April 2004 into the domestic legal framework. According to article 14 of the Decree, a European national who represents a threat to public order must leave French territory within one month, except in cases of emergency.

In addition to the provisions governing denial of asylum to persons suspected of involvement in terrorism, France has a legislative framework that allows it to expel from its territory any individual whose conduct is illegal.

Expulsion (administrative decision)

Article L.521-3 of the Code on the Entry and Residence of Foreigners and the Right of Asylum (which replaced, in March 2005, article 26 of Order No. 45-2658 of 2 November 1945) provides for the expulsion of foreign nationals who, while lawfully present in the country, engage in "conduct that might undermine the basic interests of the State, or that is linked to terrorist activities, or that constitutes explicit and deliberate provocation to discrimination, hatred or violence against a particular individual or group of individuals".

This administrative procedure has been used to expel from French territory radical preachers whose activity was felt to amount to such a provocation. Well-documented reports on their activities are prepared by the information services and transmitted for consideration to the Directorate of Civil Liberties and Legal Affairs (DLPAJ), which submits a summary to the Minister of the Interior and Territorial Development. If the expulsion is essential from the national security standpoint, the Minister of the Interior issues a Ministerial Expulsion Order against them, as a matter of absolute urgency, immediately enforceable.

Exclusion from French territory (judicial measure)

Articles 131-30 et seq. of the Penal Code provide for the expulsion of foreign nationals who have been convicted of terrorist acts even if they are lawfully present in French territory. The judge may order an additional sentence of exclusion from French territory, permanently or for a period of up to 10 years. Pursuant to this judicial measure the convicted person is automatically escorted to the border once his or her sentence has been served.

Escort to the border (administrative decision)

A foreign national suspected of terrorist activities may be subject to an expulsion order when he or she is unlawfully present in French territory (Code on the Entry and Residence of Foreigners and the Right of Asylum, arts. L551-1 et seq.).

Since 11 September 2001, 68 individuals have been expelled from the territory, including 15 radical preachers. Since 1 January 2006, 9 individuals have been expelled, including one religious leader.

1.3 How does France cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?

Cooperation in securing France's international borders takes place within the framework of the Schengen Agreement, which eliminated controls at the internal borders of States members of the Schengen area and established the principle of a single-entry checkpoint.

The Agreement led to the strengthening of police and judicial cooperation, harmonization of visa and asylum policies and the establishment of the Schengen Information System (SIS), which is to be modified in 2007 to adapt to the expansion of the European Union and to incorporate new functions such as the reading of biometric data.

The SIS is a common file for all States members of the Schengen area, aimed at centralizing and facilitating the exchange of information held by the security services with a view to maintaining public order and safety.

Under article 95 of the Schengen Agreement, an alert shall be issued concerning persons being sought for arrest and extradition, at the request of the judicial authority of the requesting member State. Article 96 concerns data relating to aliens for whom an alert has been issued for the purposes of refusing entry into the Schengen area. Such a decision may be based on a serious threat to public policy or public security or to national security.

The SIS provides real-time information on the reason for the alert and the police action to be taken at the borders. It also includes alerts for vehicles or objects sought — in particular falsified identity papers — (Convention, art. 100).

The SIS is also used on a daily basis by the consular services of French embassies abroad for the issuance of visas.

With regard to strengthening passenger security and terrorist screening, article 7 of the Anti-Terrorism Act of 23 January 2006 gives the Minister of the Interior the possibility of examining the automated data collected by the airlines (API/PNR data). Article 26 of the Act also strengthens control over access to restricted areas in airports.

Bilateral and multilateral cooperation between French and foreign security services in combating terrorism also provide an opportunity to exchange information about individuals who incite others to commit terrorist acts.

Cooperation within the G5

The G6 Interior Ministers, formerly the G5, meeting in March 2005 in Grenada, agreed to exchange lists of individuals expelled at the borders, in addition to lists of individuals observed in Al-Qaida camps and jihad areas, persons released

after being convicted of terrorist offences and subversive organizations subject to prohibition.

Thus on 2 June 2005, France distributed to its partners, inter alia, a list of 45 persons expelled from French territory since 11 September 2001. The list was updated on 13 September 2005 and 3 March 2006.

Cooperation within the European Union

France took part in the elaboration of the European Union Strategy for Combating Radicalisation and Recruitment to Terrorism (JAI 453) and the European Union Action Plan on Combating Terrorism (JAI 34). In that context, France suggested that its partners in the European Council should adopt a draft decision based on the G5-G6 exchanges, aimed at avoiding "tourism" by imams and other radical preachers (ENFOPOL 77).

This legislation does not seek to harmonize the criteria for the expulsion of radical preachers from within the member States, which are wide-ranging and must remain within the discretionary power of the political and administrative authorities to assess the potential disturbance to public order in their territory.

It is not a question of establishing an automatic mechanism or a mutual recognition of decisions taken by one member State in other member States. Each State remains free to receive in its territory, in accordance with its national legislation and its power of discretion, an individual expelled from another member State.

The French idea is to establish a systematic mutual information mechanism for the competent authorities of the member States in cases of expulsion involving terrorism.

(3. What international efforts is France participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures)?

France encourages the development of a dialogue between cultures and civilizations which is open to all schools of thought and all stakeholders, in the context of the various forums appropriate for such discussions: United Nations (in particular, UNESCO), Alliance of Civilizations, Barcelona Process (Euromed).

We support the most inclusive forms of dialogue, i.e. those that are open to all stakeholders (from Government and from civil society, both religious and non-religious) and that grapple with development problems and unresolved regional crises: addressing human rights and political and economic issues is an integral part of the dialogue among civilizations.

For this reason we support the Alliance of Civilizations and, at the regional level, the Barcelona Process (Euromed — the European Union set up this privileged link with the Mediterranean world in 1995), which offers both a framework for political discussion and opportunities for cultural exchange, in particular through the Anna Lindh Foundation.

In pursuit of these goals France has proposed the "Mediterranean cultural workshop" project. We feel it is necessary to work towards bringing together the

different Mediterranean societies. The President of the French Republic expressed this idea in a speech he gave in Barcelona on 28 November 2005: "I advocate strengthening the dialogue with civil society, particularly with businesses and NGOs. France would like us to take our cultural dialogue further and invites Euro-Mediterranean partners to take part in 2006 in a 'Mediterranean cultural workshop' that will gather artists, thinkers and policymakers from our countries."

The Cultural Workshop project — which does not claim to be launching a new diplomatic process — is based on the third objective of the Barcelona Declaration, which advocates working towards "encouraging understanding between cultures and exchanges between civil societies". The workshop project is also aimed at responding to "clash of civilizations" theory, in keeping with the Spanish-Turkish initiative on the Alliance of Civilizations, to which the Secretary-General of the United Nations has lent his full support.

The Cultural Workshop provides a work forum that is of limited duration and based on non-governmental participation (open to the societies of the Maghreb, the Machrek, Israel, the Gulf, the European Union and Turkey). It will be a true "work shop" on the major cultural themes, which will operate for a one-year period following its first meeting in Paris on 13, 14 and 15 September 2006.

France *also* supports the prompt implementation of the United Nations Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted by UNESCO on 20 October 2005, which it has supported from the start. The Convention recognizes the equal value of all cultures and contains a section on international solidarity in support of expression by all cultures, which leads to understanding, tolerance and mutual enrichment. By recognizing that culture is not simply another asset, it avoids the negative effects of unregulated globalization, which results in identity politics.

1.5 What steps is France taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

Action to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of religious institutions by terrorists and their supporters takes place in the framework of the regime set forth by the legislation governing terrorist activities (see question 1.1).

1.6 What is France doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all of its obligations under international law, in particular international human rights law, refugee law, and humanitarian law?

France ensures that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all of its obligations under international human rights law, refugee law and humanitarian law. In doing so it pays particular attention to the human rights set forth in the relevant international treaties to which it is a party (International Covenant on Civil and Political Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Racial Discrimination, etc.), and in its constitution and the European Convention on Human Rights.

The Constitutional Court (Constitutional Council) verifies the conformity of the legislation with these obligations, as well as respect for the principle of proportionality of punishment (preamble to the French Constitution, which replicates article 8 of the Declaration of the Rights of Man and of the Citizen: "The law shall provide for such punishments only as are strictly and obviously necessary").

It should be noted that, although the Constitutional Council exercises only a limited review of the legislation, it may on occasion censure manifestly disproportionate punishments (decision No. 87-237 DC of 30 December 1987).

Moreover, individuals sought in the framework of anti-terrorist inquiries enjoy all the procedural guarantees recognized by French legislation in conformity with international law. These include the right to an effective remedy before an independent, fair and impartial tribunal.

Terrorist offences are governed by a special procedural regime featuring, in particular, extension to 96 hours of the duration of police custody, with access to a lawyer postponed, for adults, to the seventy-second hour. In addition, it strengthens possibilities for police and judicial investigations. Judicial treatment of such offences is covered by the Paris counter-terrorism centre.

However, this system preserves the procedural guarantees of accused persons in order to provide them with a fair trial. Thus, an accused person enjoys the right (even if deferred) to the assistance of a lawyer, to an ongoing review by the judicial authority of all the steps of the inquiry and the coercive measures used by the specialized services, to file a remedy against all acts by the judicial authority and to appeal against any convictions handed down in the first or second instance, however serious the offences in question.

Lastly, specialized training courses are taught by the Ecole Nationale de la Magistrature as part of refresher training for judges, through special seminars on both terrorism and the functions of committing magistrates. For example, the Ecole recently held a France-Spanish seminar on combating terrorism, with the participation of specialized judges and prosecutors from France and Spain.

Concerning the return of aliens (*see* para. 1.2), France ensures that the measures taken are in conformity with its obligations to receive refugees and to combat torture and other inhuman, cruel or degrading treatment.

The Code on the Entry and Residence of Foreigners and the Right of Asylum states, "a foreigner cannot be deported to a country if he can prove that his life or liberty would be at risk in that country or that he would be exposed to treatment contrary to the requirements of article 3 of the European Convention on Human Rights", which covers the same principles as those included in article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

These provisions apply to all deportation measures handed down in French territory.

Whenever a foreigner alleges that he or she would be at risk in the event of return, the administrative authority verifies the existence of "serious reasons" to believe that the person in question would face a "real risk" of being subjected to ill-treatment in the event of return.

The review conducted takes account of the general situation in the particular State of return as well as that of groups of persons in a situation similar to that of the foreigner concerned.

In that connection, the review is based on many sources of information: reports from diplomatic missions, expert missions, international human rights committees and NGOs.

Moreover, inasmuch as the risks faced by an individual on a personal basis are not necessarily proportional to the general situation prevailing in a given country, an in-depth review is conducted of the personal situation of each foreigner concerned, his or her past activities and his or her relations with the authorities.

Finally, in certain specific cases, in addition to the above-mentioned review aimed at determining the existence of risk in the event of return, diplomatic contacts may be taken with the authorities of the country of origin to obtain more detailed information about the situation of the foreigner concerned in the event of return. This procedure, which is used on a case-by-case basis, represents an extra precaution and should in no way be compared to the practice of "diplomatic assurances", consisting of agreements with a third country which are supposed to guarantee that a national returned to that country will not face risks.

It should be emphasized that the decision specifying the country of return is subject to review by the administrative court. An appeal against a decision specifying the country of return has the effect of suspending the decision, under the same conditions as the deportation order issued by the Prefect for irregular entry or stay, if filed at the same time.

In the case of disputes involving other deportation measures (expulsion, legal prohibition against entering the territory), it is also possible, pursuant to the Act of 30 June 2000, to institute interim relief proceedings to suspend the decision specifying the country of destination.

In cases where a foreigner cannot be expelled from the territory, he or she is placed under house arrest and therefore authorized lawfully to remain in France.

7 July 2006